

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

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JOHN RONALD PRICE,	)	Cause No. CV 10-126-BLG-CSO
	)	
Petitioner,	)	
	)	
vs.	)	ORDER DENYING STATE’S
	)	MOTION TO DISMISS
LEROY KIRKEGARD;	)	
ATTORNEY GENERAL OF	)	
THE STATE OF MONTANA,	)	
	)	
Respondent.	)	

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This case originally came before the Court on referral pursuant to 28 U.S.C. § 636(b)(1) and D. Mont. L.R. 72.2(a)(1). On April 4, 2012, Respondent (“the State”) moved to dismiss the petition on the grounds that it is time-barred. On September 6, 2012, the Court issued Findings and Recommendation concluding that the motion should be denied and an evidentiary hearing set to determine whether the petition is time-barred. The State filed an objection on September 20, 2012.

Thereafter, Petitioner Price was appointed counsel, an evidentiary hearing was

set, and the parties consented in writing to magistrate judge jurisdiction. *See* Consents (doc. 30).

The State's objection continues to assert that this Court should determine whether Price's allegations are sufficient to defeat the time bar. If it were possible to determine the issue on the face of the pleadings, the Court of Appeals would have done so. A hearing is required.

Based on the foregoing, the Court enters the following:

**ORDER**

The State's motion to dismiss (doc. 18) is DENIED.

DATED this 22nd day of October, 2012.

/s/ Carolyn S. Ostby  
Carolyn S. Ostby  
United States Magistrate Judge